

ALVIN L. KILE
LESLIE L. MAXWELL

IBLA 87-189

Decided April 17, 1987

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), declaring mining claims abandoned and closing recordation files. F-52023 through F-52051.

Set aside and remanded.

1. Contests and Protests: Generally -- Mining Claims: Abandonment -- Mining Claims: Contests -- Mining Claims: Recordation -- Rules of Practice: Private Contests

Although BLM may properly declare mining claims abandoned on the basis of a state court decision on the rights of rival claimants to possession, it should not do so until the state appellate court review process is complete.

APPEARANCES: Homer L. Burrell, Esq., Anchorage, Alaska, for appellants.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Alvin L. Kile and Leslie L. Maxwell have appealed the November 14, 1986, decision of the Fairbanks District Office, Bureau of Land Management (BLM), declaring several placer mining claims and one lode mining claim abandoned and closing the recordation files on the basis of the Findings of Fact and Conclusions of Law of the Superior Court of the State of Alaska, Fourth Judicial District, in Case No. 4FA-85-1431 Civ, dated July 25, 1986.

BLM made its decision in accordance with section 3833.65 of the BLM Manual (Rel. 3-132, 4/22/86), which states: "Third Party Challenges. In cases where an adverse mining claimant states that a mining claim on file with the BLM is abandoned by its owner because the owner filed annual filings with BLM but not with the local recorder's office, the Bureau will refer the adverse mining claimant

to the appropriate court for adjudication of the matter. The BLM will abide by the judgment of the Court in the settlement of the dispute. We will not become the forum for the resolution of private party disputes between rival mining claimants. If the Court declares the mining claim(s) or sites abandoned, issue a decision to that effect and close the case file. See Gold Depository and Loan Co., Inc. v. Mary Brock et al.; 69 IBLA 194 (1982) and Sandra Memmot, 88 IBLA 379 (1985)."

Appellants' reason for appeal is that they filed a timely notice of appeal of the Alaska Superior Court's judgment, entered August 28, 1986, with the Supreme Court of Alaska. See Sec. 22.05.010, Alaska Statutes.

[1] BLM's decision was premature. Until the state appellate court review process is complete, the rights of the parties to possession of the claims have not been conclusively determined. See John R. Meadows, 43 IBLA 35, 37 (1979). Although the Department may properly accept and follow the judgment of a court of competent jurisdiction determining between contending parties their respective rights to and interests in land in controversy, Estate of Arthur C. W. Bowen, 14 IBLA 201, 210-211, 81 I.D. 30, 34 (1974), it should not do so until the rights of the parties have been conclusively determined, either on appeal or by the failure to take an appeal to the appropriate state appellate court.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Fairbanks District Office, BLM, is set aside and the case is remanded.

Will A. Irwin
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Kathryn A. Lynn
Administrative Judge
Alternate Member